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RECEIVED

JUL 20 2018

PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

July 20, 2018

Gwen R. Pinson, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

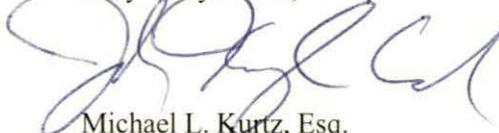
***Re: Case Nos. 2018-00146***

Dear Ms. Pinson:

Please find enclosed the original and ten (10) copies of the BRIEF OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. for filing in the above-referenced matter.

By copy of this letter, all parties listed on the Certificate of Service have been served. Please place this document of file.

Very Truly Yours,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

**BOEHM, KURTZ & LOWRY**

MLKkew  
Attachment

cc: Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail (when available) or by regular, U.S. mail, unless otherwise noted, this 20<sup>th</sup> day of July, 2018 to the following:

  
\_\_\_\_\_  
Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Jody Kyler Cohn, Esq.

Honorable James M Miller  
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JUL 20 2018

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**PUBLIC SERVICE  
COMMISSION

In the Matter of: Notice of Termination of Contracts and Application :  
of Big Rivers Electric Corporation for a Declaratory Order and for : **Case No 2018-00146**  
Authority to Establish a Regulatory Asset. :

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**BRIEF OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.**

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Kentucky Industrial Utility Customers, Inc. ("KIUC") submits this Brief in support of its Motion to Compel Discovery Responses, to Stay Procedural Schedule, and to Schedule an Informal Conference ("Motion") filed July 11, 2018 at the Kentucky Public Service Commission ("Commission"). For the reasons discussed below, the Commission should grant KIUC's motion to compel discovery responses and require Big Rivers Electric Corporation ("Big Rivers") to amend its current confidentiality agreement. The remaining requests in KIUC's Motion, seeking a stay of the current procedural schedule and the establishment of an informal conference, are now moot given the Commission's decision to address the merits of the Motion through briefing and oral argument. However, if the Commission grants any portion of KIUC's motion to compel after the July 25, 2018 oral argument hearing in this proceeding, then it should also amend the current procedural schedule to allow KIUC an opportunity to submit supplemental data requests to Big Rivers on any additional information provided as well as sufficient time to draft its testimony in this proceeding.

**PROCEDURAL BACKGROUND**

On June 15, 2018, KIUC submitted its First Set of Data Requests to Big Rivers in this proceeding. Big Rivers responded to some of those requests on July 6, 2018, but refused to provide much of the information requested, largely based upon the Company's view that such information would be "*irrelevant*" to this proceeding. Big Rivers also claimed that KIUC Question Nos. 26 and 27 were "*overly broad*" and "*unduly burdensome*."

On July 11, 2018, KIUC moved the Commission to enter an order requiring Big Rivers to respond to Question Nos. 18 through 24 and 26 through 29 of KIUC's June 15, 2018 First Set of Data Requests. Additionally, KIUC requested that the Commission stay the current procedural schedule and schedule an informal conference so that parties could discuss amending the schedule in light of the discovery dispute. KIUC maintained that a stay was also warranted in light of Big Rivers' efforts to prevent KIUC from obtaining confidential information in this proceeding.

Later the same day, the Commission issued an Order in response to KIUC's Motion, which: 1) held KIUC's Motion in abeyance; 2) ordered that KIUC and Big Rivers file briefs in support of their respective positions on or before July 20, 2018; and 3) scheduled a hearing for receiving oral arguments on the pending motion on July 25, 2018.

On July 12, 2018, KIUC filed a Petition for Clarification, asking whether the July 16, 2018 deadline for Supplemental Requests for Information was also held in abeyance in concert with KIUC's Motion or alternatively, whether KIUC would have an additional opportunity to submit Supplemental Requests for Information on any information provided to KIUC by Big Rivers as a result of the Commission's rulings on KIUC's Motion after those rulings are issued.

On July 13, 2018, the Commission granted KIUC's Motion, clarifying that the existing procedural schedule will remain in full force and effect and that, if necessary, an order amending the current procedural schedule will be issued after the July 25, 2018 oral argument hearing.

In light of the Commission's retention of the July 16, 2018 deadline for supplemental data requests in this proceeding, KIUC sent a signed version of Big Rivers' proposed confidentiality agreement to the Company on July 15, 2018, requesting that Big Rivers provide the information it alleged to be confidential by July 16, 2018. In doing so, KIUC reserved its right to argue for subsequent revisions to that agreement. Big Rivers provided a portion of the allegedly confidential information to KIUC electronically on July 16, 2018 and sent the remainder by overnight mail for receipt on July 17, 2018.

## ARGUMENT

### **I. Big Rivers' Objections To KIUC's Discovery Requests Are Unfounded.**

The information that KIUC seeks is highly relevant to this proceeding. Kentucky Rule of Civil Procedure 26.02(1), regarding the scope of discovery, provides that “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party...” The subject matter in this proceeding concerns Big Rivers’ request to establish a regulatory asset of approximately \$89.6 million related to the value of its Station Two Contracts with the City of Henderson, Kentucky and the City of Henderson Utility Commission (“Henderson”), which the Company intends to recover from customers in its next base rate case.<sup>1</sup> As the Commission has already acknowledged, the Company’s request “*would ultimately have an impact on the rates of KIUC’s members.*”<sup>2</sup> And as KIUC has already explained, in its forthcoming testimony in this proceeding KIUC intends to assert that a write-off of the \$89.6 million from member equity is more reasonable than a deferral with later recovery in member rates.<sup>3</sup>

KIUC’s data requests are directly related to its claims and defenses in this proceeding. In Question Nos. 18 through 21, KIUC requested information regarding the current deferred depreciation regulatory asset, gross plant, and accumulated depreciation for the Coleman and Wilson plants at the end of each month since December 2016. In Question Nos. 22 and 23, KIUC requested the monthly plant depreciation expense since January 2016 for the Coleman and Wilson plants. The requested data is necessary in order to assess the total current outstanding deferral balance that Big Rivers’ customers may ultimately be asked to pay in a future rate proceeding (as of April 2018, the Wilson/Coleman depreciation deferral balance stood at approximately \$125 million). As KIUC intends to argue in this proceeding, adding another \$89.6 million to this already considerable deferral balance would be an imprudent approach that would result in unjust and unreasonable rates for customers.

In Question No. 24, KIUC asks for the monthly gross plant and accumulated depreciation for each of Big Rivers’ generating plants (excluding Coleman and Wilson) since December 2016. The Company provided the

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<sup>1</sup> Application at 3.

<sup>2</sup> Order (June 21, 2018) at 3.

<sup>3</sup> Id. at 2.

requested information for Station Two, but not for any other generating plants, based upon claims of “irrelevance.” Yet this information is very relevant to KIUC’s claims in this proceeding because the revenues to recover depreciation expense provide positive cash flows and because depreciation expense is included in several relevant credit metrics used for ratemaking purposes and monitored by the Company’s lenders.

KIUC Question Nos. 26 and 27 relate to the potential impact of Big Rivers’ requested \$89.6 million regulatory asset on customer rates. Specifically, KIUC asked for the average price of power for each of the last ten years in total and by component (e.g. energy, demand, FAC, environmental surcharge and all other riders) for service to the Rural Class and Large Industrial Class as well as the number of Rural customers and the number and names of Large Industrial customers at December 31, 2017. This information is necessary to assess the level of potential rate impact that establishing an \$89.6 million regulatory asset may ultimately have on the Company’s customer classes and whether requiring customers to ultimately pay down that asset would result in rate shock. Not only is this inquiry relevant when considering whether to approve Big Rivers’ deferral request, it also seeks specific information that should be readily available to the Company. Hence, the Company’s allegations of irrelevance, undue burden and broadness with respect to those requests are groundless.

KIUC Question No. 28 requested the annual actual and projected revenues that Big Rivers received or projects that it will receive from the Missouri Municipal transaction, the Nebraska Public Power transaction, and the sale to KMEA for the years 2017 through 2026. This requested revenue information is important and relevant in this proceeding in order to determine whether the requested \$89.6 million regulatory asset and the subsequent rate effects are offset in whole or part by the revenues from these additional sales, none of which have been reflected in a base rate case to date.

Finally, Question No. 29 asked for the patronage capital account balances at Big Rivers at December 31, 2107 for Domtar and Kimberly-Clark. Obviously, this information is directly related and fundamental to KIUC’s argument that the Commission should require Big Rivers to write-off the \$89.6 million balance associated with the Henderson contracts from member equity. Accordingly, Big Rivers should be required to provide this information to KIUC.

## **II. The Commission Should Order Big Rivers To Amend Its Confidentiality Agreement In This Proceeding By Deleting The Provision Allowing Big Rivers To Unilaterally Address Potential Breaches Of The Agreement.**

The Company's current confidentiality agreement, which KIUC signed conditionally in light of the July 16, 2018 deadline for supplemental data requests, contains a problematic provision allowing Big Rivers to unilaterally: 1) determine that KIUC "breached" the agreement; 2) decide whether KIUC adequately cured that "breach;" 3) immediately terminate the agreement; and 4) prevent KIUC from using confidential information for the remainder of the proceeding. Specifically, the text of the proposed provision (paragraph 7) provides:

*If Intervenor breaches this agreement and does not immediately cure the breach in a matter satisfactory to Big Rivers, Big Rivers may terminate this agreement, in which case Intervenor shall immediately return all information provided under this agreement and shall make no further use of such information or any derivative information.*<sup>4</sup>

Not only is such language unreasonable and susceptible to abuse by Big Rivers, but it also contradicts an earlier provision of Big Rivers' confidentiality agreement (paragraph 6), which provides:

*...The parties agree that the Commission is the sole and exclusive forum for considering any alleged breach of this agreement, and that the remedies within the jurisdiction of the Commission are the only available remedies. This agreement does not restrict parties from seeking any injunctive relief in a court of competent jurisdiction which they believe that they are otherwise entitled to seek; furthermore, it does not extinguish any right to judicial review of the Commission's actions. The parties do, however, expressly waive any other relief or remedy to which they might be entitled in the absence of the limitations of the agreement.*<sup>5</sup>

This latter provision is reasonable and consistent with the language typically used in Kentucky utility confidentiality agreements, including previous Big Rivers' agreements, in which the parties designate a neutral arbiter such as the Commission to resolve potential breaches of confidentiality.<sup>6</sup> For example, in a recent KU-LG&E case, the confidentiality agreement provided:

*...In case of any disagreement between the parties with regard to the meaning or application of the Agreement, or either party's compliance with it, the parties agree that the Commission is the sole and exclusive forum for considering any information that is to be afforded confidential protection under this Agreement, and that the remedies within the jurisdiction of the Commission and the remedies stated in this Agreement are the only available remedies. This Agreement does not restrict the parties from seeking any injunctive relief in the Franklin Circuit Court which they*

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<sup>4</sup> Attachment 1.

<sup>5</sup> Id.

<sup>6</sup> See Attachment 2.

*believe they are otherwise entitled to seek; furthermore, it does not extinguish any right to judicial review of the Commission's actions. The parties do, however, expressly waive any other relief or remedy at law, but not in equity, to which they might be entitled in the absence of the limitations of this Agreement...*<sup>7</sup>

It is inappropriate for Big Rivers to seek to usurp the Commission's authority to determine whether a confidentiality agreement was breached and the redress for any such breach. Accordingly, the Commission should require Big Rivers to amend its current confidentiality agreement by deleting the offending provision (paragraph 7).

WHEREFORE, for the foregoing reasons, KIUC respectfully moves that the Commission issue an order directing Big Rivers to provide complete responses to all of KIUC's First Set of Data Requests and requiring Big Rivers to amend its current confidentiality agreement by deleting paragraph 7. Further, if the Commission grants any portion of KIUC's motion to compel after the July 25, 2018 oral argument hearing in this proceeding, then it should also amend the current procedural schedule to allow KIUC an opportunity to submit supplemental data requests to Big Rivers on any additional information provided as well as sufficient time to draft its testimony in this proceeding.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

**BOEHM, KURTZ & LOWRY**

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[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)

**COUNSEL FOR KENTUCKY INDUSTRIAL  
UTILITY CUSTOMERS, INC.**

July 20, 2018

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<sup>7</sup> Id.

# ATTACHMENT 1

**CONFIDENTIALITY AGREEMENT**

Kentucky Public Service Commission  
Case No. 2018-00146

This Agreement is entered into by and between Big Rivers Electric Corporation ("Big Rivers") and Kentucky Industrial Utility Customers, Inc. ("Intervenor").

WHEREAS, Intervenor has moved to intervene in the above referenced case and has requested review of certain information Big Rivers believes to be confidential and proprietary;

WHEREAS, during the course of this proceeding, Big Rivers may, by petition for confidential treatment, seek protection from public disclosure of information Big Rivers believes to be confidential and proprietary and for which it believes public disclosure would prove harmful to Big Rivers, and may under those circumstances, provide Intervenor with access to that information pursuant to the following confidentiality agreement alone; and

WHEREAS, Intervenor is willing to enter into this agreement and have access to the information at issue upon the terms and conditions contained herein;

NOW, THEREFORE, the parties covenant and agree as follows:

1. Access to information which Big Rivers believes to be confidential and propriety for which confidential treatment is sought by Big Rivers in this case will be limited strictly to Intervenor, its legal counsel and/or consultants, and employees of Intervenor's clients in this matter who have a need for access to the information for purposes of this proceeding, who shall execute a nondisclosure certificate as described in Paragraph 3 and attached as Exhibit A to this agreement.

2. Use of the information provided pursuant to this confidentiality agreement shall be limited strictly to Case No. 2018-00146 before the Kentucky Public Service Commission (the "Commission") and any appeals from that case.

3. The non-disclosure certificate shall require Intervenor, its legal counsel, its consultants, and the employees of its clients to read a copy of this agreement and certify in writing that it, he, or she has reviewed this agreement and agrees to be bound by its terms before disclosure of the confidential and proprietary information will be made. The certificate shall contain the full name of the signatory and their permanent business address. A copy of each certificate shall be provided to Big Rivers.

4. All copies of documents containing information that are provided to Intervenor under this agreement pending a ruling by the Commission upon a petition for confidential treatment, and information for which the Commission has ordered that confidential treatment shall be afforded, shall be deemed to be held in trust pursuant to this agreement and shall be returned to Big Rivers upon demand at the conclusion of Case No. 2018-00146. Upon demand for return of the information, any notations or other work product of Intervenor, its counsel, or its

consultants made or contained in the information shall be redacted prior to the return of the information to Big Rivers.

5. If Intervenor desires to make use of any confidential or proprietary information obtained as a result of its, its legal counsel's, or its consultant's examination of the information, whether in testimony filed by Intervenor or through cross-examination of any witness or otherwise, Intervenor shall notify Big Rivers in advance of the proposed use and shall meet with Big Rivers' representatives to attempt in good faith to establish a procedure that will accommodate the needs of Intervenor to make use of the information without risking its public disclosure. If Big Rivers and Intervenor are unable to agree on a means of preventing public disclosure of the confidential and proprietary information, Big Rivers and Intervenor will submit these issues to the Commission for resolution before the proposed use of the information is made.

6. Each and every party to this agreement will act in good faith, and no party to the agreement will do anything to deprive any other party of the benefit of this agreement. The parties agree that the Commission is the sole and exclusive forum for considering any alleged breach of this agreement, and that the remedies within the jurisdiction of the Commission are the only available remedies. This agreement does not restrict the parties from seeking any injunctive relief in a court of competent jurisdiction which they believe that they are otherwise entitled to seek; furthermore, it does not extinguish any right to judicial review of the Commission's actions. The parties do, however, expressly waive any other relief or remedy to which they might be entitled in the absence of the limitations of this agreement.

7. If Intervenor breaches this agreement and does not immediately cure the breach in a matter satisfactory to Big Rivers, Big Rivers may terminate this agreement, in which case Intervenor shall immediately return all information provided under this agreement and shall make no further use of such information or any derivative information.

8. Intervenor's participation in this agreement shall not be construed as an admission that the information claimed to be confidential and proprietary is, as a matter of law, confidential and proprietary, or as a waiver of any right to assert that the information is not confidential and proprietary before the Commission or any court of competent jurisdiction. In the event the Commission should rule that any of the information should be removed from the restrictions imposed by this agreement, Intervenor shall not disclose such information until the Commission's order subjecting the information to public disclosure is final pursuant to KRS 278.410, or until all appeals of such order have been exhausted, unless authorized to do so by Big Rivers or a court of competent jurisdiction.

9. This agreement shall bind the parties to it from the date of its execution. Every executed copy of this agreement will be deemed an original.

EXECUTED this 9<sup>th</sup> day of July, 2018.

KIUC  
Intervenor  
By: [Signature]  
Title: Counsel

Big Rivers Electric Corporation  
By: [Signature]  
Title: President + CEO



# ATTACHMENT 2

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

Electronic Application Of Kentucky Power	)	
Company For (1) A General Adjustment Of Its	)	
Rates For Electric Service; (2) An Order	)	
Approving Its 2017 Environmental Compliance	)	
Plan; (3) An Order Approving Its Tariffs And	)	Case No. 2017-00179
Riders; (4) An Order Approving Accounting	)	
Practices To Establish Regulatory Assets And	)	
Liabilities; And (5) An Order Granting All Other	)	
Required Approvals And Relief	)	

\* \* \* \* \*

**NON-DISCLOSURE AGREEMENT**

This Non-Disclosure Agreement (“Agreement”) is entered into by and between Kentucky Industrial Utility Customers, Inc. (“Intervenor”)<sup>1</sup> and Kentucky Power Company (“Kentucky Power”).

1. This Agreement shall govern the use of all Protected Materials produced by, or on behalf of, Kentucky Power in *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets And Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Case No. 2017-00179 (“the Proceeding”). Notwithstanding any order terminating the Proceeding this Agreement shall remain in effect until specifically modified or terminated by the Kentucky Public Service Commission.

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<sup>1</sup> As used in this Agreement, Intervenor includes its Authorized Representatives as defined below.

2. "Authorized Representative" shall mean a person who has signed the attached Non-Disclosure Certificate and who is: (a) an attorney who has made an appearance in this proceeding for Intervenor; (b) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (a); (c) an employee or independent contractor of Intervenor involved in this case including any expert or employee of an expert retained by Intervenor in this proceeding for the purpose of advising, preparing for or testifying in this proceeding.

3. "Protected Materials" are materials so designated by Kentucky Power that customarily are treated by Kentucky Power as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject Kentucky Power to risk of competitive disadvantage or other business injury. Protected Materials also include Critical Energy Infrastructure Information ("CEII") subject to the provisions of 18 C.F.R. § 388.112 and 18 C.F.R. § 388.113; all information designated CEII shall be treated in accordance with the requirements thereof. Protected Materials shall not include the following: (a) any information or document that has been filed with and placed of record in the public files of the Kentucky Public Service Commission ("Commission"), or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court or for which a request for protection is pending; or (b) information that is public knowledge or becomes public knowledge, other than through disclosure in violation of this Agreement or in violation of a similar agreement executed by Kentucky Power.

4. "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic information) that copies or discloses Protected

Materials. Notes of Protected Materials are subject to the same restrictions provided in this Agreement for Protected Materials except as specifically provided otherwise in this Agreement.

5. Protected Materials shall be made available under the terms of this Agreement to Intervenor solely for its use in the Proceeding and any appeals from the Proceeding, and may not be used by Intervenor for any commercial, business, or other purpose whatsoever.

6. Protected Materials shall remain available to Intervenor until an order terminating the Proceedings becomes no longer subject to judicial review. If requested to do so in writing after that date, Intervenor shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to Kentucky Power, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials and Notes of Protected Materials may be retained, if they are maintained in accordance with Paragraph 7 of this Agreement. Within such time period, Intervenor, if requested to do so, shall also submit to Kentucky Power an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 7 below. To the extent Protected Materials are not returned or destroyed, they shall remain subject to this Agreement.

7. All Protected Materials shall be maintained by Intervenor in a secure place. Access to those materials shall be limited to Authorized Representatives. Protected Materials shall be treated as confidential by Intervenor and the Authorized Representatives in accordance with the certificate executed pursuant to Paragraph 8 below. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any

manner to any person except an Authorized Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Authorized Representative may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials. Authorized Representatives may not use information contained in any Protected Materials obtained through this proceeding to give Intervenor or any competitor or potential competitor of Kentucky Power a commercial advantage or otherwise economically disadvantage Kentucky Power based on disclosure of the Protected Materials.

8. An Authorized Representative shall not be permitted to inspect, participate in discussion regarding, or otherwise be permitted access to Protected Materials unless that Authorized Representative has first executed the attached Non-Disclosure Certificate, provided that if an attorney qualified as an Authorized Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Attorneys qualified as Authorized Representatives are responsible for ensuring that persons under their supervision or control comply with this order. A copy of each Non-Disclosure Certificate shall be provided to Kentucky Power prior to disclosure of any Protected Materials to an Authorized Representative.

9. Any Authorized Representative may disclose Protected Materials to any other Authorized Representative as long as the disclosing Authorized Representative and the receiving Authorized Representative have both executed a Non-Disclosure Certificate. In the event that any Authorized Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure

Certificate shall continue to be bound by the provisions of this Agreement and the Non-Disclosure Certificate.

10. Intervenor shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

11. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents that refer to Protected Materials, shall be filed and served in compliance with the applicable procedures for filing confidential information in this proceeding. If Intervenor seeks to make use of or reference to Protected Materials, it must do so in conformity with 807 KAR 5:001, Section 7.

12. Nothing in this Agreement shall be construed as precluding Kentucky Power or Intervenor from objecting to the use of Protected Materials on any legal grounds. Moreover, nothing in this Agreement shall be construed as a waiver of Kentucky Power's right to object to data requests or other requests for information or documents from Intervenor.

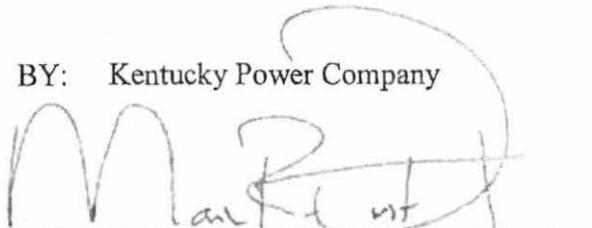
13. Nothing in this Agreement shall preclude Intervenor from requesting that the Commission find that this Agreement should not apply to all or any materials designated as Protected Materials pursuant to this Agreement. However, Intervenor shall continue to treat any Protected Materials as Protected Materials under this Agreement until the Commission issues a finding that such materials should not be designated as Protected Materials and all appeals from such a finding. Neither Kentucky Power nor Intervenor waives its rights to seek additional administrative or judicial remedies following a Commission finding that Protected Materials are not subject to protection.

14. The parties and Authorized Representatives agree by execution of this Agreement that the sole and exclusive remedy for any alleged breach of this Agreement by Intervenor shall be an injunctive proceeding pursuant to CR 65 *et seq.* of the Kentucky Rules of Civil Procedure brought in the Franklin Circuit Court and the appellate courts of Kentucky, with each party bearing its own costs. The parties further agree to waive any other remedies that may be available outside of injunctive relief from the Franklin Circuit Court. Each person signing the Non-Disclosure Certificate agrees to submit to the jurisdiction of the Franklin Circuit Court and the appellate courts of Kentucky with respect to any action alleging a breach of this Agreement. The parties and each Authorized Representative further agree that the disclosure of any information in violation of this agreement that is determined to be protectable by the Commission shall result in immediate and irreparable injury to Kentucky Power for which there is no remedy at law.

15. Inadvertent production of documents or other information or data subject to work product immunity or the attorney-client privilege shall not constitute a waiver of the immunity or privilege, provided that the producing party notifies the receiving party in writing of such inadvertent production immediately upon learning of same. Such inadvertently produced documents, and all copies thereof, shall be returned to the producing party upon request. No use may be made of such documents subsequent to the request to return them.

16. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials, including Notes of Protected Materials, shall not be disclosed to anyone other than in accordance with this Non-Disclosure Agreement and shall be used only in connection with this proceeding.

BY: Kentucky Power Company

  
Counsel

BY: Kentucky Industrial Utility  
Customers, Inc.

  
Counsel

4 July 2017  
Date

7/5/17  
Date

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Application Of Kentucky Power	)	
Company For (1) A General Adjustment Of Its	)	
Rates For Electric Service; (2) An Order	)	
Approving Its 2017 Environmental Compliance	)	
Plan; (3) An Order Approving Its Tariffs And	)	Case No. 2017-00179
Riders; (4) An Order Approving Accounting	)	
Practices To Establish Regulatory Assets And	)	
Liabilities; And (5) An Order Granting All Other	)	
Required Approvals And Relief	)	

\* \* \* \* \*

**NON-DISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Non-Disclosure Agreement between Kentucky Industrial Utility Customers, Inc. and Kentucky Power Company in the above-captioned proceeding, that I have been given a copy of and have read the Non-Disclosure Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, including Critical Energy Infrastructure Information (“CEII”) subject to the provisions of 18 C.F.R. § 388.113 (2012) (all information designated CEII shall be treated in accordance with the requirements thereof), along with any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Non-Disclosure Agreement, and will be used only for the purposes of this proceeding.

BY: Jody Kayler Cohn

Jody Kayler Cohn  
(Printed or Type Name)

Title: Counsel

Representing: KIUC

Date: 7/5/17

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Application Of Kentucky Power	)	
Company For (1) A General Adjustment Of Its	)	
Rates For Electric Service; (2) An Order	)	
Approving Its 2017 Environmental Compliance	)	
Plan; (3) An Order Approving Its Tariffs And	)	Case No. 2017-00179
Riders; (4) An Order Approving Accounting	)	
Practices To Establish Regulatory Assets And	)	
Liabilities; And (5) An Order Granting All Other	)	
Required Approvals And Relief	)	

\* \* \* \* \*

**NON-DISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Non-Disclosure Agreement between Kentucky Industrial Utility Customers, Inc. and Kentucky Power Company in the above-captioned proceeding, that I have been given a copy of and have read the Non-Disclosure Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, including Critical Energy Infrastructure Information (“CEII”) subject to the provisions of 18 C.F.R. § 388.113 (2012) (all information designated CEII shall be treated in accordance with the requirements thereof), along with any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Non-Disclosure Agreement, and will be used only for the purposes of this proceeding.

BY: Mike K  
Mike Kurtz

(Printed or Type Name)

Title: Attorney

Representing: KIUC

Date: 7/5/17

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Application Of Kentucky Power )  
Company For (1) A General Adjustment Of Its )  
Rates For Electric Service; (2) An Order )  
Approving Its 2017 Environmental Compliance )  
Plan; (3) An Order Approving Its Tariffs And )  
Riders; (4) An Order Approving Accounting )  
Practices To Establish Regulatory Assets And )  
Liabilities; And (5) An Order Granting All Other )  
Required Approvals And Relief )

Case No. 2017-00179

\* \* \* \* \*

**NON-DISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Non-Disclosure Agreement between Kentucky Industrial Utility Customers, Inc. and Kentucky Power Company in the above-captioned proceeding, that I have been given a copy of and have read the Non-Disclosure Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, including Critical Energy Infrastructure Information ("CEII") subject to the provisions of 18 C.F.R. § 388.113 (2012) (all information designated CEII shall be treated in accordance with the requirements thereof), along with any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Non-Disclosure Agreement, and will be used only for the purposes of this proceeding.

BY: K. Boehm

Kurt Boehm

(Printed or Type Name)

Title: Attorney

Representing: KIUC

Date: 7-5-17

**CONFIDENTIALITY AGREEMENT**

(Case No. 2014-00371) *In the Matter of: Application of Kentucky Utilities Company  
for an Adjustment of Its Electric Rates*

and

(Case No. 2014-00372) *In the Matter of: Application of Louisville Gas and Electric Company for  
an Adjustment of Its Electric and Gas Rates*

\*\*\*\*\* \*\*\*\*\*

This Confidentiality Agreement (“Agreement”) is made and entered into by and between Kentucky Utilities Company (“KU”), Louisville Gas and Electric Company (“LG&E”) (collectively, the “Companies”), and Kentucky Industrial Utility Customers, Inc. (“KIUC”).

**WHEREAS**, on November 26, 2014, KU filed an application with the Kentucky Public Service Commission (“Commission”) in *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates* (Case No. 2014-00371); and

**WHEREAS**, on November 26, 2014, LG&E filed an application with the Commission in *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates* (Case No. 2014-00372); and

**WHEREAS**, the Companies have requested, and anticipate that they will further request during this proceeding, confidential protection for certain confidential information provided in support of their applications in this proceeding, and further anticipate that the Companies may produce confidential information in response to data requests from the Commission Staff or intervenors in this proceeding (all such information being included in the term, “Confidential Information”); and

**WHEREAS**, on November 3, 2014, the Commission granted full intervention to KIUC in Case Nos. 2014-00371 and 2014-00372; and

**WHEREAS**, KIUC hereby requests access to and the inspection of the Confidential Information in these proceedings; and

**WHEREAS**, the Companies believe that public disclosure of the Confidential Information would prove harmful to the Companies; and

**WHEREAS**, the Companies will provide KIUC with access to the Confidential Information pursuant to the conditions of the Agreement as set forth below;

**NOW, THEREFORE**, for good and sufficient consideration, the parties agree and covenant as follows:

1. KIUC shall not publicize or otherwise disclose the Confidential Information to any third party and shall strictly limit access to the Confidential Information to its legal counsel, itself, or those of its employees (collectively the "Employees") and its experts or consultants (hereinafter "Agents") who have a need to know the Confidential Information for purposes of KIUC's participation in Case Nos. 2014-00371 and 2014-00372. Prior to accessing the Confidential Information, each of the Employees or Agents shall execute a non-disclosure agreement as described in paragraph 3 and attached as Exhibit A to this Agreement.

2. KIUC shall strictly limit its and its Employees' and Agents' use of the Confidential Information to use in Case Nos. 2014-00371 and 2014-00372 before the Commission and any appeals from the cases.

3. The non-disclosure agreement to be executed by each Employee and any Agent shall require KIUC and its Employees and any Agent to read a copy of this Agreement and certify in writing on Exhibit A that he or she has reviewed this Agreement and agrees to be bound by its terms before disclosure of the Confidential Information will be made.

4. Any notes made by KIUC or its Employees or Agents deriving from the Confidential Information shall be deemed to also be Confidential Information hereunder and may not be disclosed or used other than as allowed by this Agreement. Following the conclusion of Case Nos. 2014-00371 and 2014-00372, all physical or electronic forms of the Confidential Information shall be destroyed by KIUC, its Employees, and any Agents and confirmation of the destruction by KIUC, its Employees, and Agents upon request shall be provided in writing to Kendrick R. Riggs, Stoll Keenon Ogden PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202-2828 upon demand.

5. If KIUC desires or is requested to disclose any Confidential Information obtained as a result of the examination thereof, whether in testimony filed by or through cross-examination of any witness or otherwise, KIUC shall notify the Companies in advance of the proposed use and shall meet with Company representatives to attempt in good faith to establish a procedure that will accommodate the needs of KIUC for disclosing the information without risking its public disclosure. If KU, LG&E, and KIUC are unable to agree on a means of preventing public disclosure of the Confidential Information, KU, LG&E, and KIUC will submit these issues to the Commission for resolution before the information is placed in the public record.

6. In the event that a person seeks such confidential or proprietary information by a public records request, KIUC will initially refuse to disclose such confidential or proprietary information pursuant to this agreement or if applicable, pursuant to a previous determination of confidentiality by the Commission. Should the person seeking such confidential or proprietary information seek to enforce disclosure, KIUC will immediately notify KU and LG&E.

7. Each party to this Agreement will act in good faith, and neither party to this Agreement will do anything to deprive any other party of the benefit of this Agreement. In case of any disagreement between the parties with regard to the meaning or application of the Agreement, or either party's compliance with it, the parties agree that the Commission is the sole and exclusive forum for considering any information that is to be afforded confidential protection under of this Agreement, and that the remedies within the jurisdiction of the Commission and the remedies stated in this Agreement are the only available remedies. This Agreement does not restrict the parties from seeking any injunctive relief in the Franklin Circuit Court which they believe that they are otherwise entitled to seek; furthermore, it does not extinguish any right to judicial review of the Commission's actions. The parties do, however, expressly waive any other relief or remedy at law, but not in equity, to which they might be entitled in the absence of the limitations of this Agreement. In the event the Commission should rule that any of the information should be removed from the restrictions imposed by this Agreement, no party shall disclose the Confidential Information covered by the Agreement or use it in the public record for twenty (20) business days, until the Commission's Order subjecting the Confidential Information to public disclosure is final pursuant to KRS 278.410, or until all appeals of such Order are exhausted, unless authorized to do so by the providing party or a court of competent jurisdiction. The provisions of this paragraph are made to enable the providing party to seek a stay or other relief from the Commission or other court order removing the restriction of this Agreement from information claimed by the providing party to be confidential or proprietary.

8. Upon any actual or threatened violation of this Agreement by KIUC, the parties acknowledge that the Companies' remedy at law will be inadequate and that the Companies will

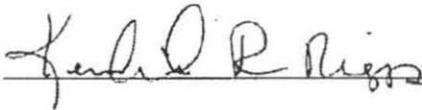
be irreparably harmed by such violation. As a result, the Companies shall be entitled to preliminary and other injunctive relief against such violation without being required to post a bond therefore, in addition to any other rights or remedies which the Companies may have in equity.

9. KIUC's participation in this agreement shall not be construed as an admission that the Confidential Information claimed to be confidential and proprietary is, as a matter of law, confidential and proprietary, or as a waiver of any right to assert that the Confidential Information is not confidential and proprietary before the Commission or any court of competent jurisdiction.

10. This Agreement shall be governed by the laws of the Commonwealth of Kentucky. This Agreement shall bind the parties to it from the effective date set forth above. Every executed copy of this Agreement will be deemed an original.

EXECUTED THIS 7<sup>th</sup> DAY OF JANUARY 2015.

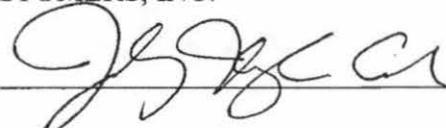
LOUISVILLE GAS AND ELECTRIC COMPANY  
AND KENTUCKY UTILITIES COMPANY

By: 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

KENTUCKY INDUSTRIAL UTILITY  
CUSTOMERS, INC.

By: 

Name: Jody Kyler Cohn

Title: Counsel for KIUC



**EXHIBIT A**  
**NONDISCLOSURE AGREEMENT**

In consideration of being given access to confidential and proprietary information of Kentucky Utilities Company ("KU"), Louisville Gas and Electric Company ("LG&E"), and its consultants, the undersigned hereby agree that, before disclosure to each of them of such confidential and proprietary information, they have read the Confidentiality Agreement dated January 14, 2015, between KU, LG&E, and Kentucky Industrial Utility Customers, Inc., which is incorporated herein by reference as if it were set out in its entirety, and agree to be bound by its terms.

<u>Print Name</u>	<u>Address</u>
<u>Lane Kollen, VP</u>	<u>J. KENNEDY AND ASSOCIATES, INC.</u>
<u>LANE KOLLEN</u>	<u>570 COLONIAL PARK, STE 305, ROSWELL, GA</u>
<u>R.A. [Signature] MANAGER OF CONSULTING</u>	<u>" "</u>
<u>RANDY A. Futral</u>	<u>" "</u>
<u>Leah J Wellborn</u>	<u>" "</u>
<u>Leah J Wellborn, consultant</u>	<u>" "</u>
<u>[Signature]</u>	<u>" "</u>
<u>Brian R. Barber Director of Consulting</u>	<u>" "</u>
<u>STEPHEN BARON PRESIDENT</u>	<u>" "</u>
<u>Steph G. Baron</u>	<u>" "</u>
<u>Philip Hayet</u>	<u>" "</u>
<u>Philip Hayet, Vice President</u>	<u>" "</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

<b>APPLICATION OF SOUTH KENTUCKY</b>	)	
<b>RURAL ELECTRIC COOPERATIVE</b>	)	
<b>CORPORATION FOR APPROVAL OF</b>	)	<b>CASE NO.</b>
<b>MASTER POWER PURCHASE AND</b>	)	<b>2018-00050</b>
<b>SALE AGREEMENT AND TRANSACTIONS</b>	)	
<b>THEREUNDER</b>	)	

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**CONFIDENTIALITY AGREEMENT**

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This Agreement is entered into by and between South Kentucky Rural Electric Cooperative Corporation (hereinafter referred to as the "Company"), and Nucor Steel Gallatin (hereinafter referred to as the "Intervenor"), by and through their representatives.

**WHEREAS**, the Intervenor has been granted intervention in the above-captioned case involving the Application of the Company for approval of Master Power Purchase and Sale Agreement ("Application"), and has requested review of certain information which the Company believes to be confidential and proprietary;

**WHEREAS**, the Company has sought or will seek confidential treatment by the Kentucky Public Service Commission for all information that it believes to be confidential and proprietary;

**WHEREAS**, the Company has requested or will request that the Commission protect from public disclosure the information which the Company believes to be confidential and

proprietary, and therefore has provided the Intervenor with access to the information pursuant to the following confidentiality agreement alone;

**WHEREAS**, during the course of this proceeding the Company may, by Motion(s) for Confidential Treatment, seek protection from public disclosure of other and/or additional information the Company believes to be confidential and proprietary and will under those circumstances provide the Intervenor with access to that information pursuant to the following confidentiality agreement alone; and

**WHEREAS**, the Intervenor is willing to enter into this agreement and have access to the information at issue upon the terms and conditions contained herein;

**NOW, THEREFORE**, the parties covenant and agree as follows:

1. Access to information which the Company believes to be confidential and propriety that is or will become the subject of the aforementioned Motion(s) for Confidential Treatment, and access to all further information for which confidential treatment may be sought by said Motion(s) in this case will be limited strictly to the Intervenor, and its legal counsel, administrative assistants, and/or consultants, who shall execute a non-disclosure certificate as described in paragraph 3 and attached as Exhibit A to this agreement.
2. Use of the information provided pursuant to this confidentiality agreement shall be limited strictly to this case and any subsequent appeals from this case.
3. The non-disclosure certificate shall require the Intervenor, its legal counsel and consultant(s) to read a copy of this agreement and certify in writing that he or she has reviewed this agreement and agrees to be bound by its terms before disclosure of the confidential and proprietary information will be made to that individual. The certificate shall contain the full

name of the Intervenor's legal counsel and/or staff and/or consultant(s), and their permanent business address. A copy of each certificate will be provided to the Company as soon as is reasonably practicable following the execution of each certificate.

4. All copies of documents containing information that are provided to the Intervenor under this agreement pending a ruling by the Commission upon a Motion for Confidential Treatment, and information for which the Public Service Commission has Ordered that confidential treatment shall be afforded, shall be deemed to be held in trust pursuant to this agreement and shall either be returned to the Company upon demand at the conclusion of the case, or, at the option of the Intervenor such copies of documents shall be destroyed by the Intervenor and their destruction so certified by the Intervenor to the Company. In the event that the information is returned to the Company, any notations or other work product of the Intervenor, its counsel or consultants made or contained in the information shall be redacted prior to the return of the information to the Company. Neither the Intervenor, its legal counsel, its consultant(s) nor anyone acting under the control, direction or supervision shall make or retain copies of the information for which confidentiality has been afforded by the Commission or the information for which confidentiality has been sought, but has not yet been ruled upon by the Commission.

5. The Intervenor shall not disclose the confidential information in whole or in part during any aspect of this proceeding except under seal and shall not refer to such confidential information in open proceedings except in a manner which maintains the confidentiality of the confidential information.

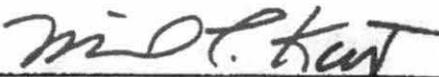
6. Each and every party to this agreement will act in good faith, and no party to the agreement will do anything to deprive any other party of the benefit of this agreement. The parties agree that either of them may seek such legal and/or equitable relief from the Franklin Circuit Court as the sole and exclusive forum for considering any alleged breach of this Agreement. Furthermore, this Agreement does not extinguish any right to judicial review of the Commission's actions.

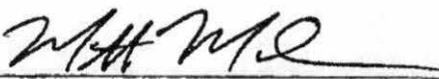
7. The Intervenor's participation in this Agreement shall not be construed as an admission that the information claimed to be confidential and proprietary is, as a matter of law, confidential and proprietary, or as a waiver of any right to assert that the information is not confidential and proprietary before the Public Service Commission or any court of competent jurisdiction. In the event the Commission should rule that any of the information should be removed from the restrictions imposed by this agreement, no party shall disclose such information until the Commission's Order subjecting the information to public disclosure is final pursuant to KRS 278.410, or until all appeals of such Order have been exhausted, unless authorized to do so by the providing party or a court of competent jurisdiction.

8. This agreement shall bind the parties to it from the date of its execution. Every executed copy of this agreement will be deemed an original.

9. By executing this agreement, counsel affirmatively represents that they have the authority and capacity to bind the parties whom they represent whose duties are identified herein.

EXECUTED AND EFFECTIVE THIS 13<sup>th</sup> day of March, 2018.

By:   
Counsel for the Intervenor

By:   
Counsel for South Kentucky Rural Electric Coop. Corp.

**EXHIBIT A**  
**NONDISCLOSURE CERTIFICATE**

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

<b>APPLICATION OF SOUTH KENTUCKY</b>	)	
<b>RURAL ELECTRIC COOPERATIVE</b>	)	
<b>CORPORATION FOR APPROVAL OF</b>	)	<b>CASE NO.</b>
<b>MASTER POWER PURCHASE AND</b>	)	<b>2018-00050</b>
<b>SALE AGREEMENT AND TRANSACTIONS</b>	)	
<b>THEREUNDER</b>	)	

The undersigned hereby certify that, before disclosure to them of any confidential and proprietary information of South Kentucky Rural Electric Cooperative Corporation ("South Kentucky") has been disclosed to them, they have read the confidentiality agreement between South Kentucky and the Intervenor, dated March \_\_\_\_\_, 2018, which is incorporated herein by reference as if set forth in its entirety, and agree to be bound by its terms.

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
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_____	_____
_____	_____

## Kim Walton

---

**From:** Michael Kurtz  
**Sent:** Monday, January 14, 2013 4:02 PM  
**To:** Jim Miller  
**Subject:** RE: Big Rivers' Rate Case-Confidentiality Agreements  
**Attachments:** DOC548.pdf

Jim:

Please see the attached Confidentiality Agreement, signed on behalf of KIUC.

Michael L. Kurtz, Esq.  
Boehm, Kurtz & Lowry

---

**From:** Jim Miller [jmillersmsmlaw.com]  
**Sent:** Monday, January 14, 2013 3:26 PM  
**To:** [larry.cook@aq.ky.gov](mailto:larry.cook@aq.ky.gov); Michael Kurtz; Brown, David  
**Cc:** Tyson Kamuf  
**Subject:** Big Rivers' Rate Case-Confidentiality Agreements

All:

Here are confidentiality agreements in the same form that you signed in the financing case, with only the case name changed. If you will sign and return to me we will furnish the information Big Rivers will be filing under confidentiality petition.

Jim

James M. Miller  
Sullivan, Mountjoy, Stainback & Miller, P.S.C.  
100 St. Ann Street  
P.O. Box 727  
Owensboro, KY 42302-0727  
Telephone (270) 926-4000  
Direct Dial (270) 691-1640  
Fax (270) 683-6694

### CONFIDENTIALITY STATEMENT:

This message from the law firm of Sullivan, Mountjoy, Stainback & Miller, P.S.C. contains information which is privileged and confidential, and is solely for the use of the intended recipient. If you are not the intended recipient, be aware that any review, disclosure, copying, distribution, or use of the contents of this message is strictly prohibited. If you have received this in error, please immediately destroy it and notify us at (270) 926-4000.

**CONFIDENTIALITY AGREEMENT**

Kentucky Public Service Commission

Case No. 2012-00535

This Agreement is entered into by and between Big Rivers Electric Corporation ("Big Rivers") and Kentucky Utility Industrial Customers, Inc. ("Intervenor").

WHEREAS, Intervenor has moved to intervene in the above referenced case and has requested review of certain information Big Rivers believes to be confidential and proprietary;

WHEREAS, during the course of this proceeding, Big Rivers may, by petition for confidential treatment, seek protection from public disclosure of information Big Rivers believes to be confidential and proprietary and for which it believes public disclosure would prove harmful to Big Rivers, and will under those circumstances, provide Intervenor with access to that information pursuant to the following confidentiality agreement alone; and

WHEREAS, Intervenor is willing to enter into this agreement and have access to the information at issue upon the terms and conditions contained herein;

NOW, THEREFORE, the parties covenant and agree as follows:

1. Access to information which Big Rivers believes to be confidential and propriety for which confidential treatment is sought by Big Rivers in this case will be limited strictly to Intervenor, its legal counsel and/or consultants, and employees of Intervenor's clients in this matter who have a need for access to the information for purposes of this proceeding, who shall execute a nondisclosure certificate as described in paragraph 3 and attached as Exhibit A to this agreement.
2. Use of the information provided pursuant to this confidentiality agreement shall be limited strictly to Case No. 2012-00535 before the Kentucky Public Service Commission (the "Commission") and any appeals from that case.
3. The non-disclosure certificate shall require Intervenor, its legal counsel, and its consultants to read a copy of this agreement and certify in writing that it, he, or she has reviewed this agreement and agrees to be bound by its terms before disclosure of the confidential and proprietary information will be made. The certificate shall contain the full name of Intervenor's legal counsel and/or consultant(s) and their permanent business address. A copy of each certificate shall be provided to Big Rivers.
4. All copies of documents containing information that are provided to Intervenor under this agreement pending a ruling by the Commission upon a petition for confidential treatment, and information for which the Commission has Ordered that confidential treatment shall be afforded, shall be deemed to be held in trust pursuant to this agreement and shall be returned to Big Rivers upon demand at the conclusion of Case No. 2012-00535. Upon demand for return of the information, any notations or other work product of Intervenor, its counsel, or its

consultants made or contained in the information shall be redacted prior to the return of the information to Big Rivers.

5. If Intervenor desires to make use of any confidential or proprietary information obtained as a result of its, its legal counsel's, or its consultant's examination of the information, whether in testimony filed by Intervenor or through cross-examination of any witness or otherwise, Intervenor shall notify Big Rivers in advance of the proposed use and shall meet with Big Rivers' representatives to attempt in good faith to establish a procedure that will accommodate the needs of Intervenor to make use of the information without risking its public disclosure. If Big Rivers and Intervenor are unable to agree on a means of preventing public disclosure of the confidential and proprietary information, Big Rivers and Intervenor will submit these issues to the Commission for resolution before the proposed use of the information is made.

6. Each and every party to this agreement will act in good faith, and no party to the agreement will do anything to deprive any other party of the benefit of this agreement. The parties agree that the Commission is the sole and exclusive forum for considering any alleged breach of this agreement, and that the remedies within the jurisdiction of the Commission are the only available remedies. This agreement does not restrict the parties from seeking any injunctive relief in a court of competent jurisdiction which they believe that they are otherwise entitled to seek; furthermore, it does not extinguish any right to judicial review of the Commission's actions. The parties do, however, expressly waive any other relief or remedy to which they might be entitled in the absence of the limitations of this agreement.

7. Intervenor's participation in this agreement shall not be construed as an admission that the information claimed to be confidential and proprietary is, as a matter of law, confidential and proprietary, or as a waiver of any right to assert that the information is not confidential and proprietary before the Commission or any court of competent jurisdiction. In the event the Commission should rule that any of the information should be removed from the restrictions imposed by this agreement, Intervenor shall not disclose such information until the Commission's Order subjecting the information to public disclosure is final pursuant to KRS 278.410, or until all appeals of such Order have been exhausted, unless authorized to do so by Big Rivers or a court of competent jurisdiction.

8. This agreement shall bind the parties to it from the date of its execution. Every executed copy of this agreement will be deemed an original.

EXECUTED this 14<sup>th</sup> day of January, 2013.

Kentucky Industrial Utility Customers, Inc.

Intervenor

By:     *Mil C. Kent*    

Title:     *Attorney*    

Big Rivers Electric Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

